

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

TYRAN BLAKE SHARP,

Plaintiff,

v.

Case No. 04-71457

DAVID GUNDY,

HONORABLE AVERN COHN

Defendant.

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**ORDER DENYING CERTIFICATE OF APPEALABILITY**

This is a habeas case under 28 U.S.C. § 2254. Tyran Blake Sharp (Petitioner) is a state inmate serving a prison sentence of twenty-five to forty years for assault with intent to murder, MICH. COMP. LAWS § 750.83; and three years, four months to five years for attempted armed robbery, MICH. COMP. LAWS §§ 750.92, 750.529. Petitioner, through counsel, filed a petition for writ of habeas corpus claiming that he is incarcerated in violation of his constitutional rights. The Court denied the petition. See Memorandum Opinion and Order filed December 14, 2004. The Court denied a certificate of appealability on January 12, 2005. The U.S. Court of Appeals for the Sixth Circuit also denied Petitioner a certificate of appealability and dismissed Petitioner's appeal on October 14, 2005. See Sharp v. Gundy, No. 05-1065 (6th Cir. Oct. 14, 2005). Petitioner then filed a "Motion for Relief from Order Denying Petition for Writ of Habeas Corpus," in which Petitioner sought relief from judgment from the Court's December 14, 2004, opinion under Fed. R. Civ. P. 60(b). The Court denied the motion.

On December 1, 2005, Petitioner filed a Notice of Appeal indicating that he is appealing to the Sixth Circuit the Court's denial of his motion for relief from judgment under Fed. R. Civ. P. 60(b).

In a habeas case like this one under either 28 U.S.C. §§ 2254 or 2255, an appeal cannot proceed unless the district court determines whether to certify any issue(s) for appeal. See 28 U.S.C. § 2253(c)(1) and FED. R. APP. P. 22(b). A certificate of appealability may be issued "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). If the district court dismissed a habeas petition on the merits, the Petitioner must show that "reasonable jurists could debate whether" it "should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." Slack v. McDaniel, 529 U.S. 473 (2000) (internal quotations omitted). Based on the record, the Court declines to issue a certificate of appealability.

SO ORDERED.

s/Avern Cohn  
AVERN COHN  
UNITED STATES DISTRICT JUDGE

Dated: January 27, 2006

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, January 27, 2006, by electronic and/or ordinary mail.

s/Julie Owens  
Case Manager  
(313) 234-5160